85-2080

Supreme Court, U.S.
FILED
JUN 18 1986
JOSEPH F. SPANIOL, JR.
CLERK

No _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1985

Robert K Grace, petitioner

Vs.

Heartland Transportation Inc., respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Robert K Grace
petitioner pro se
P.O. Box 25005
St. Louis Mo 63125

Bryan, Cave, McPheters
Attorneys for Respondent
500 N. Broadway
St Louis Mo 63102

36pp

Motion to proceed without the prepayment of costs pursuant to 28 U.S.C. sec. 1916

Comes Now petitioner, Robert K Grace and pursuant to 28 U.S.C. sec. 1916 requests to proceed without furnishing costs or security therefore. This motion is grounded in that the petitioner is a seaman suing within the admiralty jurisdiction of the Federal Courts, for wages, and his own benifit. 28 U.S.C. § 1333.

Wherefore, petitioner prays that this motion be granted.

Respectfully Submitted
Robert K Grace
P.O. Box 25005
St. Louis Mo 63125

Questions Presented for Review

1) Does the U.S. Court of Appeals have the jurisdiction to hear an admiralty appeal on a notice of appeal that was filed within the time provisions of 28 U.S.C. § 2107?

2) Should the Court of Appeals take judicial notice of 28 U.S.C. §2107 when they were requested to do so under FRE 201? Should the Court have provided opportunity to be heard on the request?

3) Should the Court of Appeals mandamus the District Court to adjudicate an element of excusable neglect by and on a motion for extension per FRAP 4(a)5?

4) Whether this Court should review these questions by certiorari?

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Reference to Opinions and Orders

Copies of both the District Court's order on denial of leave and the Court of Appeal's orders respecting the refusal to grant relief by mandamus, dismissal of appeal 85-1671-EM and denial of the petition for rehearing, and denial of reconsideration of rehearing in another Circuit(that should have reflected judicial notice) are all set forth in the appendix to this petition. None of the orders have been published.

Jurisdictional Statement

The decree petitioner seeks review of was enterred by the U.S. Court of Appeals for the Eighth Circuit on October 25, 1985 in its cases bearing docket Nos. 85-1671-EM and 85-8085 Misc. A timely petition for rehearing was filed and the Court of Appeals denied the petition on November 19,1985

Petitioner believes this Court's power to review the matter by certiorari is conferred by the provisions of 28 U.S.C. §1254 (1), 28

U.S.C. §2101 (c), and Supreme Court Rule 17.

This petition, though not originally filed per the printing and size requirements of rule 33, was filed timely in the first instance on both January 9,1986 and January 25, 1986. This formal document comes following both a denial to proceed on typewritten papers on March 3,1986 and a denial for reconsideration of that order enterred on June 2,1986

Applicable Provisions of Law

28 U.S.C. §2107

"In any action,suit or proceeding in admiralty the notice of appeal shall be filed within ninety days after the entry of the order, judgement or decree appealed from, if it is a final decision,"

FRAP 4(a)5

"The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this rule 4(a). Any such motion which is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past prescribed time or 10 days from the date of the entry of the order

granting the motion, whichever occurs later."

FRCP 6(b)(2)

"When by these rules or by notice given thereunder or by order of court an act is required to be done or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect."

FRE 201 (c)(d)(e)(f)

(c) "A court may take judicial notice, whether requested or not."

(d) "A court shall take judicial notice if requested by a party and supplied with the necessary information."

(e) "A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In absence of prior notification, the request may be made after judicial notice has been taken.

(f) "Judicial Notice may be taken at any stage of the proceeding."

Cambell V White, 721 F2nd 644 at 647 (8th 1983)

"We think it mandatory that the district court clerk's offices screen notices of appeal for timeliness and advise pro se litigants of the appropriateness of an extension motion. We further direct that the district court clerks prepare a notice to be given litigants that informs them of the time limitations for filing a notice of appeal under Rule 4 of the Federal Rules of Appealate Procedure, and the

necessity of filing a timely motion for extension within thirty (30) day extension period if the notice of appeal is untimely."

Statement of the Case

This petition seeks review by certiorari the errors committed in the case by the Court of Appeals, Eighth Circuit. Appeal was brought to that court from the District court, Eastern District of Missouri which is the court of first instance.

The case was filed there alleging that the petitioner had: 1) enterred into an implied agreement with the defendant; or at least rendered services for the defendant's benifit, 2) that the defendant breeched the agreement; or at least owes plaintiff for rendering the services, and 3) that the defendant wronged plaintiff tortiously in several ways. The action was instituted on November 15,1983 and given case no. 83-2602-A-3. Later, the District Court sustained admiralty jurisdiction of the case, 28 U.S.C. § 1333, as it was found to state both maritme contract and maritime tort claims.

Plaintiff pursued discovery and was granted motion to compel relevant evidence. During the course of events, the district judge expressed a leaning toward the defendants contention of the facts indicated and shown by dictum in a court's memorandum. Plaintiff moved for recussal pursuant to 28 U.S.C. § 144, but the judge refused to recuse himself.

Based upon evidence obtained and contained in the record, plaintiff moved for a summary judgment on the contract claim on Feb 28,1985. At the pretrial conference on March 21,1985, the defendant filed a cross-motion for summary judgment on that claim. Plaintiff was ordered to respond to that claim within 10 days in which he did. Within the pretrial order, the court also concluded that there was a genuine dispute between the parties.

On April 8,1985 the parties appeared for the court's docket call for trial [1] and the court advised that it was postponing trial

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1) Both parties had requested continuance for the trial previously but were denied.

until the defendants motion for summary judgment was ruled on. The court then enterred an order on April 15,1985 granting the defendants motion for summary judgment going against the existence of the implied agreement. The order also denied plaintiff's motion for summary judgment and additionally denied to exercise pendant jurisdiction over the claims it had previously granted as maritime claims.

On May 31,1985 the petitioner filed a notice of appeal pursuant to the 90 day filing period of 28 U.S.C. §2107, for admiralty cases. The appeal was designated by the 8th Circuit as 85-1671-EM. Appellee-defendant moved for dismissal of the appeal on the basis that since the notice was filed 45 days after entry of the summary judgment it was untimely for the Federal Rules of Appeallate Procedure allow 30 days.

Faced with the situation of 28 U.S.C. § 2107 possibly being ineffectual, petitioner moved the District Court for an extension to

file the notice of appeal. Realizing that the motion for extension was made after the extension period in FRAP 4(a)5, movant also filed a motion for leave to file the motion for extension. The motion for leave to file was grounded on excusable neglect for failure to file the motion for extension within the period.

The excusable neglect consisted of two possible factors: 1) Reliance on a statute, 28 U.S.C. §2107, that has not been repealed; In Feeder Line Towing Service V Peoria & West RR CO, 539 F2d 1107 (7th 1976), the court held reliance on 2107 constituted excusable neglect to permit an extension. It seemed only right to apply this rationale for the petitioners neglect in not filing timely. 2) The district court failed to abide by a ministerial directive of the Eighth Circuit that commanded the district court to provide a notice to all litigants informing them of the necessary motions and time requirements

for filing them.That directive is set forth in Cambell V White, 721 F2nd 644 at 647. The petitioner did not recieve such notice as commanded and did not learn of the Cambell directive or the necessity of filing a extension motion until after the extension period expired.

The District Court denied to grant leave to file the extension motion. It enterred a ruling on September 12,1985 stateing that the motion for leave was untimely filed. This ruling prompted an appeal and application for writ of mandamus in the court of appeals. Both the appeal and the application were designated as 85-8085-Misc. On October 25, 1985 the court of appeals enterred an order both dismissing appeal 85-1671-Em(from summary judgmet) for lack of a timely notice and denying to gr grant relief by way of mandamus or reversal on appeal.

A timely petition for rehearing was filed on 85-8085 Misc. At the same time, it was requested that the court vacate that part of

the order dismissing 85-1671-EM and to reinstate that appeal to the docket. The 85-8085 petition for rehearing was grounded on the belief that the Appellate court overlooked the factors that constituted an abuse of discretion by the district court in its denial of leave, and also that it misapprehended the relief sought by mandamus.

The motion to vacate and reinstate 85-1671 was grounded on reason that 28 U.S.C. § 2107 is still operative as law; It has been amended five times within the last year and Congress has left the 90 day admiralty provision in tact. On November 19,1985 the court denied the petition for rehearing and the motion to vacate and reinstate.

Following these denials, appellant-petitioner filed three motions: 1) A motion for reconsideration and vacation of the November 19,1985 decree. 2) Motion for the court to take judicial notice of 28 USC 2107, and also requesting a hearing on the matter to be noticed. 3) Motion for hearing or rehering

in another Circuit Court. On December 6, 1985 the Court of Appeals enterred an order stateing only: "Appellants motinn for reconsideration or rehearing of his cases in anot another Circuit Court of Appeals is denied." The appellants motions were not all ruled on.

Thus comes this petition for review.

Argument

From the outset, petitioner is mindful that review by Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. It is petitioner's belief that the instant situation is within the class of cases that are outlined by Rule 17.1(a). To be specific, the part of that Rule that the court should give consideration to this petition with says: "When a Federal Court of Appeals * * * so far departed from accepted and usual course of judicial proceedings; or has so far sanctioned such departure by a lower court, as to call for an exercise

of this Court's power of supervision."

The entire situation stems from an issue of appellate court jurisdiction on a summary judgment decree, when the notice of appeal was filed 45 days after its entry. Logically, either the 90 day provision of 28 U.S.C. § 2107 applies, or the Eighth Circuit's directive stated in Cambell V White,721 F2d 644 at 647 is a pertinent and justifiable reason to adjudicate the element of excusable neglect If 28 U.S.C §2107 is inoperative, plaintiffs failure to file a timely motion for extension within the extension period was because the DIstrict Court failed to provide a notice it was directed to provide. Since this matter can be percieved as alternative to each other this argument will follow the scheme of the questions presented for review. Questions 1 and 2 will be argued together for it seems natural to do so, and question 3 will be argued separately:

The substance of 28 U.S.C. §2107 is to

authorize appellate jurisdiction. A special time provision is made therin for cases of admiralty. This Court has said that "The federal courts have an obligation to exercise the jurisdiction given them." Colorado River Water Conservation Dist. V United States, 442 US 800, 96 SCt 1236, 47 Led 2d 483. However, the Court of Appeals for the Eighth Circuit, is dodging the jurisdiction of the summary' judgment.

When appellee first filed a motion to dismiss on 85-1671-EM appellant responded as asserted that §2107 was a proper basis to contrue the timliness of the notice of appeal. The Court of Appeals refused to dismiss the appeal at first, without prejuddce to the issue of timliness being raised later on the briefs or at oral argument. When the Court refused to dismiss the appeal, appellee filed a motion for reconsideration and renewed their motion to dismiss, The Court finally did dismiss the appeal in its October 25,1985 order but throughout the proceeding it never

took notice that 2107 was operative. Yet this court has made it clear that "Courts take judicial notice of existance of public statute and the time when it takes effect." Gardner V Barney, (Gardner V The Collector) 6 Wall 499, 18 LEd 890

At the later stages of the process, the appellant formally requested the court to ta take notice of §2107. According to FRE 201(d) a court shall take notice when requested by a party. The Eighth Circuit has taken judicial notice in other cases, even commenting that they were required to. See- Crimm V Missouri Pacific R Co, 750 F2d 703 (8th 1984); Kempe V U.S., 151 F2d 680, 684 (8th 1945) Still, the Court of Appeals for the Second Circuit has said that "Court of Appeals was compelled to grant motion to take judicial notice, both in gravity of the issue and in furtherance of justice." Barr Rubber Products Co V Sun Rubber Co., 425 F2d 1114 (2nd Cir 1970) cert. denied 91 SCt 118, 400 US 878, 27 LEd2d 115

The Eighth Circuit's failure to take notice makes its order of October 25,1985 arbitrary. The Eighth Circuit's failure to take notice when it was formally requested to do so makes its actions malicious. "The court may not shut its eyes to any facts or common knowledge." Louisville Trust Co. V Louisville N.A. & C.R. Co., 174 US 674, 19 SCt 822, 43 Led 1130; citations ommitted. And since the gravity of the issue is one of appellate jurisdiction under a statute of Congress, this Court should review the matter by certiorari. This Court has granted certiorari to clarify the boundaries of jurisdiction of a lower federal court. See: Hagans V Lavine (1974) 415 US 528,533, 94 SCt 1372, 39 LEd2d 577; see also: 13 Moores Federal Practice, sec. 817.27 p. SC17-34

The Eighth Circuit has no doubt abused its discretion from summary judgment in many ways. Any order enterred arbitraily is enter red without jurisdiction. This court has held that "The object of a writ of certiorari * *

is not merely to correct errors committed by the inferror tribunal, but to inquire whether that tribunal has exceeded its jurisdiction." ExParte Vallandigham, 1 Wall 243-254, 68 US 243, 17 LEd 584 (1864)

The third question presented for review relates to the alternative proposition that the Court of Appeals should have issued a writ of mandamus directed to the District Judge commanding him to adjudicate the element of excusable neglect on the motion for leave. According to FRAP 4(a)5 the district court can grant a 30 day extension period to file a notice of appeal. Usually both the notice of appeal and the motion for extension should be filed within the 30 day extension period. Nevertheless, FRAP 4(a) 5 autorizes motions for extensions to be fi filed after the expiration of the extension period. The Rule says that: "Notice of any such motion which is filed after expiration of the prescribed time shall be given to

other parties in accordance with local rules." Which was done in this case.

In Cambell V White, 721 F2d 644 (8th 1983) the Eighth Circuit previously considered an issue of an extension motion. There the court deemed it necessary that a motion for extension be filed within the extension period. The court realized that its ruling might have harsh results so it formulated and ordered its directive to the district courts for them to provide notice to litigants. This directive found on page 647 of Volume 721 of the Federal Reporter 2nd ed, is set forth verbatim in the begining of this petition.

Now the notice of appeal in issue was filed 45 days after the entry of judgment. As such it appears filed 15 days into the extension period. The extension period expired on June 15,1985. Because of excusable neglect the motion for extension was not filed until July 15,1985. Under the madated directives (emphasis added) of Cambell, supra. filing

a motion for leave accompanying the motion for extension made after the prescribed extension period is not only proper but it would be the only way that the motion for ex extension could be deemed timely filed.

FRCP 6(b)(2) provides that leave can be granted at any time where the failure to perform an act in a specified time was the result of excusable neglect. There is no specified time for filing a motion for leave under the rule. However, the district court ruled the motion for leave untimely. It never reaches the merits of the motion. The denial of leave for being untimely is not only erroneous but considering the circumstances surrounding it, and given that appellate jurisdiction would ultimately be predicated upon the merits of the motion for extension, the district court abused its discretion by denying leave. The result of the denial is that it obstructs appellate jurisdiction.

Appellant-plaintiff applied to the Court of Appeals for a writ of Mandamus based on

applicable guidlines set down by this court. It has long been established by this court that on mandamus an appeals court's authority "Is not confined to issuance of writs in aid of a jurisdiction already acquired by appeal, but it extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Otherwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal." Roche V Evaporated Milk Ass'n 319 US 21, 63 SCt 938, 87 LEd 1185; citing: ExParte Bradstreet, 7 Pet 634; Insurance Co. V Comstock 16 Wall 258,270; Exparte Us 287 US 241

However, the outcome of the petition for mandamus was a denial of relief. The Eighth Circuit ruled that there was no abuse of discretion by the district court in its

denial of leave, even though the district court failed to adjudicate the excusable neglect on the motion. Its ruling the motion as untimely is unreasonable and whimsical for it passes the merits to be decided. The supreme court can review on certiorari a circuit court's grant or refusal of a writ of mandamus. See: United States ex rel Riggs V Johnson County (Riggs V Johnson County), 6 Wall 166, 18 LEd 768; See also: Roch V Evaporated Milk, supra.

Further, this court has held that on certiorari to review mandamus proceedings, "The question is not whether the court below had power to grant writ but whether in light of all circumstances the case was appropriate one for exercise of courts power." And also: "The Supreme Court looks to principles which should guide judicial discretion in use of an extraordinary remedy, rather than formal rules rigorously controlling judicial action." Roche V Evaporated Milk Ass'n , supra.

The Eighth Circuit's order denying relief

by mandamus is arbitrary and maliciously' enterred. The petitioner had asked the Court for precise relief asking for "An order directing Judge Hungate to adjudicate the element of excusable neglect on the motion for leave to file for extension and for him to enter an appropriate order upon adjudication of the motion for leave."

In one of its cases, the Eighth circuit remanded a case for the sole purpose of the district court adjudicating excusable neglect. See: Sechachalam V Crieghton University Sch. of Medicine, 549 F2d 79 cert denied 97 SCt 2974. Surely this court can see from the stated relief that petitioner's request for mandamus was consistant with prior Eighth Cir. precedent.

Moreso, the sole basis for applying for relief was because the factors of excusable neglect were never ruled on in the district court's order denying leave. This Court has considered mandamus to be appropriate when a district court had not considered

factors on a motion for transfer. See: Platt V Minnesota Mineing & Mfg. Co., (1964) 376 US 240, 84 SCt 769, 11 LEd2d 674 From this the court should see that the petitioner was mindful that mandamus does not run the gauntlet of reversible error and its office is not to control de cision of trial court, but rather merely to confine lower court to sphere of its discretionary power. Will V U.S., (1967) 389 US 90

All of this notwithstanding the Court of Appeals in its order of October 25,1985 viewed the petition to mandamus the district court to grant an extension. The court wrote:" "Whether the No. 85-8085 documents are considered as an appeal to reverse the Sept 12,1985 order or a petition to mandamus the district court to grant an extension, the relief sought by Grace should be denied." CLearly this Court can see that the Appellate order is way of the mark from the merits of the petition or appeal from the lower courts ruling of the motion for leave as untimely.

The appellant's petition for rehearing was based on this misunderstanding but proved to no avail. This court should see that petitioner has been bombarded by a barage of arbitrary, fanciful, whimsical, and malicious orders and denials. both in the Court of Appeals and in the District Court. It is important that the appellate jurisdiction of the summary judgment be established b by either of the alternate methods. That is by either lawful entitlement under 28 USC 2107 or proper adjudication of an extension motion. Needless to say that the matter surrounding the motion for leave must be cleared up before the motion for extension can be ruled on. Within the same order that concerns the summary judgment, the district court had ruled all the maritime claims as pendant claims. With that ruling the district court closed its case file, has since thwarted the jurisdiction of the appeal from the order, the appeals court has refused to take jurisd-

iction or assist plaintiff-appellant-petitioner to procure the procedural steps to attain the appeal. This court must review the matter. Comeing with this petition for certiorari is a separate petition for mandamus. This Court's power to issue a writ of mandamus may overlap its authority to grant certiorari when the court is acting in a supervisory capacity. Mandamus is an extraordinary remedy and rule 17 permits the court to grant certiorari to remedy conduct that would not merit use of an extraordinary writ. See: 13 Moores, Federal Practice sec. 317.27 P. SC17-31

The conduct of the lower courts is prejudicial and outrageous. The district court involved, has on occaision expressly required leave for the plaintiff-petitioner to file certain motion related documents and memoranda. On October 22,1984 the court sent petitioner a Notice to counsel advising that leave was required to file a memorandum filed on October 18,1984. Leave was granted

on November 2,1984. Another Notice To Counsel was sent to petioner by the Court on October 10,1985 requiring leave to file a memorandum filed on October 7,1985. Leave was granted on October 18,1985.

Further, the defendant has on numerous occasions requested leave to file documents. Some of their requests for leave have been made and granted without notice to the pltff. The one notice that plaintiff did recieve from them concerned their motion for leave to specifically file documents out of time.

This court should review the matter below. Petitioner comes to this honorable Court under 28 U.S.C. §1916 and in such manner bestows admiralty jurisdiction upon this court. Petitioner is the ward of this admiralty court.

Conclusion

Petitioner respectfully requests reveiw of the appellate jurisdiction of 85-1671-Em in the Eighth Circuit by way of certiorari. Further, petitioner requests consideration

by review of the matter on the motion for leave and its related appellate proceedings. in the Eighth Circuit under docket No. 85-8085 Misc. This court has reason to review them under rule 17. Petitioners right to ask for review is further justified because, "A denial of jurisdiction forbids all inquiries into the nature of the case." Per Justice Marshal, C.H.J. Osborn V Bank of U.S., 9 Wheat 778, 6 LEd 204

Whether the Court of Appeals has refused to lawfully take jurisdiction of appeal 85-1671-EM under 28 USC sec 2107 and further refused to take judicial notice of such statute or whether Court of Appeals did not act in conformance of its duties on the mandamus proceedings, this court should grant this petition because "It is the responsibility of all courts to see that no unauthorized extension or reduction of jurisdiction direct or indirect occurs in the federal system." Baltimore Contractors Inc V Bodinger

348 US 176, 75 SCt 249, 99 Led 233; Coopers & Lybrand V Livesay 437 US 463

Wherefore, petitioner prays that this petition be granted.

Respectfully Submitted,
Robert K Grace
Robert K Grace

P.O. Box 25005
St Louis Mo 63125

Affidavit of Service

I Robert K Grace served a single copy of this petition on the respondant's attorney of record, Mr Neil N Bernstien at his office address of Bryan,Cave, McPheters, Mcroberts,500 N. Broadway, St. Louis Mo. 63102 by personal service on the day of January 8,1986. Service of the original petition was authorized in this manner by Rules 28.3 and 23.5 respectively.

Pursuant to the filing of this formal document, service of three copies of this petition has been served on the same respondant's attorney and in like manner this day of

June 12, 1986.

Pursuant to 28 U.S.C. sec. 1746(2), I declare under penalty of perjury the foregoing is true and correct.

Executed on this day of June 12, 1986

Robert K Grace
Robert K Grace

Appendix

United States Court Of Appeals
For The Eighth Circuit

Nos.85-1671 and 85-8085

Robert K Grace, Appellant	*	
V	*	From the U.S. District Court for Eastern District of Missouri
Heartland Transportation Appellee	*	

Filed October 25,1985

ORDER

Before this court are a renewed motion to

dismiss the appeal in No. 85-1671 and documents recently received by this court from Robert K Grace and filed under docket No 85-8085. The No. 85-8085 filings can be characterized either as an appeal notice from a district court order of September 12, 1985, denying a motion for leave to file for extension of time for notice of appeal, or a petition to mandamus the district court to grant an extension.

We conclude that the notice of appeal in No 85-1671 was untimely. The renewed motion to dismiss should be and is granted and the appeal is dismissed.

The matter of granting an extension of time for notice of appeal rests in the sound discretion of the district court, and we find no abuse of discretion in the district court's ruling of September 12,1985. Whether the No 85-8085 documents are considered as an appeal to reverse the september 12, 1985 order or a petition to mandamus the district court to grant an extension, the relief sought by Grace should be denied. Thus No 85-8085 is also dismissed.

It is so ordered.

United States Court of Appeals
For the Eighth Circuit

No 85-1671-EM

Robert K Grace,	*	
Appellant	*	Appeal from the U.S.
	*	District Court for
Vs.	*	the Eastern District
	*	of Missouri
Heartland Transportation	*	
Appellee	*	

No 85-8085

Robert K Grace, Appellant	*	
Vs	*	ORDER
Heartland Transportation Appellee	*	

The appellant's motion to vacate order and to reinstate appeals, and his petition for rehearing have been filed by the Court and are denied.

November 19,1985

United States Court of Appeals
For the Eighth Circuit

Nos. 85-1671EM and Misc No 85-8085

Robert K Grace Appellant	*	
Vs.	*	Appeal from the U.S. District Court for the Eastern District of Missouri
Heartland Transportation Appellee	*	

Appellant's motion for reconsideration or rehearing of his cases in another Circuit Court of Appeals is denied.

December 6,1985

United States District Court
Eastern District of Missouri
Eastern Division

Robert K Grace, Plaintiff	)	
VS	)	No 83-2602A(3)
Heartland Transportation Defendant	)	

Order

This matter is before the Court on pro se plaintiff's motion for leave to file for extension of time for notice of appeal.

Plaintiff filed a notice of appeal on May 31,1985, on a judgment rendered April 15, 1985. Plaintiff filed this motion on july 22,1985. Because this motion and the motion for an extension of time, dated July 15,1985,are untimely filed, SEE Fed.R.App.P. 4(a)(5); Cambell V White, 721 F2d 644 (8th Cir 1983),

IT IS HEREBY ORDERED that plaintiff's motion be and the same is denied.

Dated this 12th day of September,1985

William Hungate
United States District Judge